

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3785 OF 2023

(Smt. Jyoti Damodhar Wasnik Vs. Smt. Kamalabai Vitthalrao Somkuwar thr. her legal heir Shri Raju s/o Vitthal Somkuwar and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. P. S. Tidke, Advocate for Petitioner.

CORAM: ANIL S KILOR, J.

DATE: 23rd AUGUST, 2023.

The order rejecting application for condonation of delay passed by the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Nagpur on 23.07.2021 is under challenge in this writ petition.

2. The case of the petitioner is that the respondents in collusion with each other obtained the order in the dispute filed in a Cooperative Case No.454/2004 by the disputant – respondent No.1 against the respondent No.2 society.

3. It is further submitted that a Regular Civil Suit No.830/2013 was filed by the petitioner against the NIT for permanent injunction restraining the NIT from demolishing the suit house/any portion thereof and disturbing her possession over the same. In the said suit the respondent filed an application for intervention claiming thereby owner of the adjoining property on the basis of the judgment and

award dated 29.11.2008 passed by the Co-operative Court, Nagpur in the above referred dispute.

4. Thereupon, the petitioner approached to the Appellate Tribunal by filing the appeal along with the application for condonation of delay seeking to condone the delay of 4450 days in filing an appeal.

5. Admittedly, the appeal was filed under Section 97 of the Maharashtra Co-operative Societies Act, 1960 (for short the Act of 1960) and as per the language of Section 97 of the Act of 1960, any party to the dispute who is aggrieved can file the appeal under Section 97 of the Act of 1960.

6. Undisputedly the petitioner was not party to the dispute before the Co-operative Court and therefore, the appeal under Section 97 of the Act of 1960, on the behest of the petitioner is not maintainable.

7. Since the petitioner was not party to such dispute, the judgment and award passed in such dispute cannot be said to be binding on the petitioner. Therefore, the petitioner may avail any other remedy available under the law.

8. In the circumstances, the present writ petition is dismissed with liberty to the petitioner to avail any appropriate remedy as available under the law.

(ANIL S. KILOR, J)